IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.48 of 2002 (M/B)

Manoj Garbyal s/o Sri D.S. Garbyal,
R/o Mohalla Garbyal Khera,
Dharchula, District Pithoragarh …… Petitioner

Versus

1. State of Uttaranchal through
   Chief Secretary, Uttaranchal Shasan, Dehradun
2. Secretary, Department of Irrigation,
   Uttaranchal Shasan, Dehradun.
3. Secretary, Nagar Vikas Vibhag, Uttaranchal Shasan,
   Dehradun.
4. District Magistrate, Pithoragarh.
5. Executive Engineer, Construction Division,
   Irrigation Department, Pithoragarh.
6. Executive Engineer, Nagar Panchayat,
   Dharchula, District Pithoragarh.
7. Executive Engineer, Lok Nirman Vibhag,
   Provincial Division Askot, District Pithoragarh.
8. Bhumi Sanrakshan Adhikari, Pithoragarh …… Respondents

…….

Sri Manoj Tiwari, Advocate for the petitioner.
Mr. J.P. Joshi, Addl. C.S.C. for the respondents.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

RAJEEV GUPTA, C. J. (Oral)

Sri Manoj Tiwari, Advocate for the petitioner.

Mr. J.P. Joshi, Addl. C.S.C. for the respondents.

They are heard.

2. The petitioner has filed this writ petition for the following reliefs:

"A. To issue a writ, order or direction in the nature of mandamus commanding the respondents to take appropriate remedial steps for prevention of further soil erosion/land slides at various points on the Indian side of river Kali at Dharchula and particularly near the pillar of the rope bridge where land slides are occurring frequently during the last several years.

B. To issue a writ order or direction in the nature of mandamus commanding the respondent no. 1 to monitor the progress

and quality of the construction of embankments/retaining walls through some officer or a Committee so that the public money released for the purpose is not misused.

C. To issue a writ order or direction in the nature of mandamus commanding the respondents to order an inquiry into the misutilisation of funds by the concerned agencies which were allocated huge amount of money in the past for the purpose of construction of embankments/retaining walls and for taking other remedial steps and to fix individual responsibility upon the erring Officer.

D. To issue any other suitable writ order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

E. To award the cost of the writ petition in favour of the petitioner."

3. The respondents had filed their counter affidavit on 8.10.2002. Thereafter, a supplementary counter affidavit was filed on 02.05.2003. Paras 3 to 5 of the supplementary counter affidavit read as follows:

"3. That in addition to the averments as have been made in the counter affidavit as filed earlier on behalf of the answering respondents, the respondents have to state in additional reply to para no. 15 of the writ petition (as contained in para no. 16 of the counter affidavit) that the District Magistrate, Pithoragarh had sent a project/work plan of Rs. 20.42 lacs to the State of U.P. vide his office letter dated 7.8.2002, but on account of creation of new State of Uttaranchal no response could be received from the State of U.P. However, the District Magistrate, Pithoragarh vide his letter dated 20.06.2002 submitted another work plan of Rs. 26.70 lacs for construction and special repairs regarding Dharchula Flood Protection Work for the year 2002-2003 under Border Area Development Program including therein some additional protection.

4. That vide Government of Uttaranchal order dated 13.02.2003, the State Irrigation Department has approved the aforesaid work plan and has also sanctioned the amount of Rs. 26.70 lacs as was proposed and within the aforesaid sanctioned amount Rs. 11.85 lacs have also been released for carrying out the aforesaid project. In this connection, copy of the order dated 13.02.2002 is annexed herewith and is marked as Annexure No. SCA-1 to this supplementary counter affidavit.

5. That in execution of the aforesaid work plan and aforesaid amount received therefore a safety wall of 74 metars in length from upstream of Zhoola bridge (suspension bridge) was started and 70% of the aforesaid work was completed by the

> end of March 2003. The rest of the work is also in progress and it is expected that before the start of rainy season the project may be completed. In this connections, it is also pertinent to submit here that as and when the remaining budget for the aforesaid project is received the protection wall from down stream to Zhoola bridge (suspension bridge) shall also be taken into hands and shall be completed so that the soil erosion on account of flood from Kali river may be checked and safety and security to the local residents of Dharchula town will be ensured."

4. Thus, it is apparent that the respondents are aware of the gravity of the situation and are taking all necessary steps within their capacity. 'River "Kali" is a border river between India and Nepal'. We hope that the works undertaken by the respondents, if not already completed, shall be completed as expeditiously as possible.

5. With the above observation, the writ petition stands disposed of.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C. J.)**
20.06.2006 20.06.2006

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